

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/22/03232/FPA
FULL APPLICATION DESCRIPTION:	Change Of Use from Class E 'Commercial, Business and Services' to a mixed-use comprising uses within use Class E and Sui Generis 'Drinking establishments and venues for live music performances and events' with ancillary facilities, alterations to the external elevations and provision of a roof-top terrace with external seating and associated facilities.
NAME OF APPLICANT:	Anson House 12 Limited
ADDRESS:	4 - 6 Silver Street Durham DH1 3RB
ELECTORAL DIVISION:	Elvet and Gilesgate
CASE OFFICER:	Scott Henderson Senior Planning Officer Telephone: 03000 265286 scott.henderson@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site is located within Durham city centre, along the main shopping thoroughfare between Market Place to the north east and Framwellgate Bridge to the south west, within the defined primary retail shopping area. The site is located within the Conservation Area, with the rear of the building abutting the boundary of the World Heritage Site to the south. The building is not listed. Public rights of way nos. 66 and 67, known as Moatside Lane, abut the west and south of the site.
2. The building is relatively modern, built in the 1930s, with subsequent extensions up until the 1970s, including an attached annex building to the rear. It has a large footprint that covers the whole of the plot and measures some 60 metres in length stretching from Silver Street to Moatside Lane to the rear. It is three storeys in height with a wide modern shop front, consisting of six large, glazed panels and two quadruple door entrance points, and dominates a large section of this part of Silver Street. The upper two floors have a brick façade, with a regular placement of sash windows, some set within surrounds at first floor level. The building has a parapet and flat roof behind, upon which lie numerous air conditioning units and fans, ducting, steps, railings and service buildings.
3. Formerly occupied by Marks and Spencer and M&Co, the building has been used at ground and first floor level for retail purposes, with the second floor in use for offices

and staff facilities in one form or another. Permission was approved in 2022 to convert the first and second floors to student accommodation, not yet implemented. It is worth noting that this proposal, if approved, would preclude the student accommodation use from being implemented. Yorkshire Trading Co. currently operate retail from the ground floor only leaving the majority of the building's floorspace, if not vacant then, little used. Rear access to the property is achieved through Saddler Lane, within a gated courtyard area, access to which is taken off Saddler Street to the east. It is understood that some deliveries and servicing of the premises is achieved at this point.

4. The wider, mainly pedestrianised, area contains a typical mix of town centre uses, namely retail shops, leisure uses such as cafes, restaurants and bars, community and civic building and upper floor residential uses. Public transport facilities are available from the Market Place and the train station is a 7-minute walk.
5. The site is within Flood Zone 1 and Durham City Conservation Area.

The Proposal

6. The application seeks permission for a Change of Use from Class E 'Commercial, Business And Services' to a mixed-use comprising uses within use Class E and Sui Generis 'Drinking establishments and venues for live music performances and events' with ancillary facilities, alterations to the external elevations and provision of a roof-top terrace with external seating and associated facilities.
7. Note, the illuminated fascia advertisements and signs are not part of the submission and would be subject to a separate Advertisement Consent application.
8. The applicant is seeking to utilise the full extent of the building (2729 sqm gross internal) to provide a mixed-use leisure facility, operated by STACK, an established regional operator of similar developments now throughout the country and including Newcastle, Carlisle, Seaburn and Lincoln. The building would house a mix of local independent tenants as well as operations ran directly by the applicant. The space is intended to be flexible to reflect current trends and customer requirements and is likely to change over time and throughout the year.
9. Three food outlets and two bars are proposed at ground floor located around a central seating 'plaza'. A stage is proposed to accommodate live music and comedy events. The first floor will contain additional food and drink areas plus seating and finally the second floor would accommodate an indoor games space plus a newly created external roof-top terrace.
10. Externally, public access will still be maintained from Silver Street via a refurbished shopfront. The shopfront works will see new PPC fascias, cladding and windows, a new recessed opening with the existing brickwork plinths retained and painted to match. The glazed openings will not be dressed and will allow unobstructed views into the active customer areas inside. Upper floor windows will be replaced with specialist acoustic units to match the existing pattern. There are no material changes proposed to the remainder of the front façade.
11. The proposed second floor or roof-top terrace provides seating only, centred around a glazed roof lantern. The terrace would be lined with planted screens. An external plant compound is also proposed at this level, plus internal plant rooms and lift overruns and back of house cellar storage/staff rooms.
12. The proposed hours of operation are to match the approved premises licence as follows:

08.00 - 00.30 Monday – Thursday
08.00 - 01.30 Friday – Sunday.

All bar sales and music will stop 30 minutes prior to the above and no regulated entertainment will be allowed on the roof terrace after 23.00.

13. This application is being considered by committee at the request of the City of Durham Parish Council.

PLANNING HISTORY

14. DM/20/03760/FPA - Partial change of use to create 58 bed Student Accommodation Facility to include the erection of a single storey extension to existing roof and associated access arrangements (amended title) (updated elevation and floor plan to south west) – Approved by committee 14.09.2021

PLANNING POLICY

NATIONAL POLICY

15. The following elements of the National Planning Policy Framework (NPPF) are considered relevant to this proposal:
16. *NPPF Part 2 - Achieving sustainable development.* The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
17. *NPPF Part 4 - Decision-making.* Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
18. *NPPF Part 6 – Building a strong, competitive economy:* The Government is committed to ensuring the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore, significant weight should be placed on the need to support economic growth through the planning system.
19. *NPPF Part 7 – Ensuring the Vitality of Town Centres.* Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.
20. *NPPF Part 8 – Promoting healthy and safe communities.* The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning

Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.

21. *NPPF Part 9 – Promoting sustainable transport.* Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
22. *NPPF Part 11 Making Effective Use of Land.* Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously developed or 'brownfield' land.
23. *NPPF Part 12 Achieving Well-Designed Places.* The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.
24. *NPPF Part 14 – Meeting the challenge of climate change, flooding and coastal change.* The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.
25. *NPPF Part 15 Conserving and Enhancing the Natural Environment -* Conserving and enhancing the natural environment. The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from Page 73 pollution and land stability and remediating contaminated or other degraded land where appropriate.
26. *NPPF Part 16 - Conserving and Enhancing the Historic Environment.* Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

<https://www.gov.uk/guidance/national-planning-policy-framework>

NATIONAL PLANNING PRACTICE GUIDANCE:

27. The Government has consolidated a number of planning practice guidance notes, circulars and other guidance documents into a single Planning Practice Guidance Suite. This document provides planning guidance on a wide range of matters. Of particular relevance to this application is the practice guidance with regards to; air quality; historic environment; design process and tools; determining a planning application; flood risk; healthy and safe communities; land affected by contamination; housing and economic development needs assessments; housing and economic land

availability assessment; light pollution; natural environment; neighbourhood planning; noise; open space, sports and recreation facilities, public rights of way and local green space; planning obligations; travel plans, transport assessments and statements; use of planning conditions; and; water supply, wastewater and water quality.

<https://www.gov.uk/government/collections/planning-practice-guidance>

LOCAL PLAN POLICY:

The County Durham Plan

28. *Policy 7 (Visitor Attractions)* supports the provision of new, or the expansion of existing attractions, provided they are: in sustainable and accessible locations or can be made so; are appropriate to the site's location in terms of scale, design, layout and materials; can demonstrate viability of new attraction or helps support viability of existing attraction; enhances existing attractions and supports the visitor economy.

Where a countryside location is required, development should: meet identified visitor needs; support local employment and community services; ensure adequate infrastructure; and respect the character of the countryside.

29. *Policy 9 Retail Hierarchy and Town Centre Development* seeks to protect and enhance the hierarchy of Sub Regional, Large Town, Small Town, District and Local retail centres in the county
30. *Policy 21 Delivering Sustainable Transport* states that all development shall deliver sustainable transport by (in part) ensuring that any vehicular traffic generated by new development, following the implementation of sustainable transport measures, can be safely accommodated on the local and strategic highway network and does not cause an unacceptable increase in congestions or air pollution and that severe congestion can be overcome by appropriate transport improvements.
31. *Policy 25 Developer Contributions*. Advises that any mitigation necessary to make the development acceptable in planning terms will be secured through appropriate planning conditions or planning obligations. Planning conditions will be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Planning obligations must be directly related to the development and fairly and reasonably related in scale and kind to the development.
32. *Policy 29 Sustainable Design* Requires all development proposals to achieve well designed buildings and places having regard to SPD advice and sets out detailed criteria which sets out that where relevant development is required to meet including; making a positive contribution to an areas character and identity; provide adaptable buildings; minimise greenhouse gas emissions and use of non-renewable resources; providing high standards of amenity and privacy; contributing to healthy neighbourhoods; providing suitable landscape proposals; provide convenient access for all users; adhere to the Nationally Described Space Standards (subject to transition period).
33. *Policy 31 Amenity and Pollution* Sets out that development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions or the natural environment and that they can be integrated effectively with any existing business and community facilities. Development will not be permitted where inappropriate odours, noise, vibration and other sources of pollution cannot be suitably mitigated against, as well

as where light pollution is not suitably minimised. Permission will not be granted for sensitive land uses near to potentially polluting development. Similarly, potentially polluting development will not be permitted near sensitive uses unless the effects can be mitigated.

34. *Policy 32 Despoiled, Degraded, Derelict, Contaminated and Unstable Land* states [in part] that development will not be permitted unless the developer can demonstrate that the site is suitable for the proposed use, and does not result in unacceptable risks which would adversely impact on the environment, human health and the amenity of local communities.
35. *Policy 35 Water Management*. Requires all development proposals to consider the effect of the proposed development on flood risk, both on-site and off-site, commensurate with the scale and impact of the development and taking into account the predicted impacts of climate change for the lifetime of the proposal. All new development must ensure there is no net increase in surface water runoff for the lifetime of the development. Amongst its advice, the policy advocates the use of SuDS and aims to protect the quality of water.
36. *Policy 36 Water Infrastructure*. Advocates a hierarchy of drainage options for the disposal of foul water. Applications involving the use of non-mains methods of drainage will not be permitted in areas where public sewerage exists. New sewage and waste water infrastructure will be approved unless the adverse impacts outweigh the benefits of the infrastructure. Proposals seeking to mitigate flooding in appropriate locations will be permitted though flood defence infrastructure will only be permitted where it is demonstrated as being the most sustainable response to the flood threat.
37. *Policy 39 Landscape* states that proposals for new development will be permitted where they would not cause unacceptable harm to the character, quality or distinctiveness of the landscape, or to important features or views and that development affecting valued landscapes will only be permitted where it conserves, and where appropriate enhances, the special qualities of the landscape, unless the benefits of the development in that location clearly outweigh the harm.
38. *Policy 41 Biodiversity and Geodiversity* states that proposal for new development will not be permitted if significant harm to biodiversity or geodiversity resulting from the development cannot be avoided, or appropriately mitigated, or as a last resort, compensated for.
39. *Policy 43 Protected Species and Nationally and Locally Protected Sites* development proposals that would adversely impact upon nationally protected sites will only be permitted where the benefits clearly outweigh the impacts whilst adverse impacts upon locally designated sites will only be permitted where the benefits outweigh the adverse impacts. Appropriate mitigation or, as a last resort, compensation must be provided where adverse impacts are expected. In relation to protected species and their habitats, all development likely to have an adverse impact on the species' abilities to survive and maintain their distribution will not be permitted unless appropriate mitigation is provided, or the proposal meets licensing criteria in relation to European protected species
40. *Policy 44 Historic Environment*. Seeks to ensure that developments should contribute positively to the built and historic environment and seek opportunities to enhance and, where appropriate, better reveal the significance and understanding of heritage assets. The policy advises on when harm or total loss of the significance of heritage assets can be accepted and the circumstances/levels of public benefit which must apply in those instances.

41. *Policy 45 Durham Castle and Cathedral World Heritage Site.* Both are designated heritage assets of the highest significance. New development should sustain and enhance the significance and be based upon Outstanding Universal Value, protecting and enhancing it in the immediate and wider setting and important views across, out of and into the site. Harmful development is only permitted in wholly exceptional circumstances.

City of Durham Neighbourhood Plan

42. *Policy S1: Sustainable Development Requirements of all Development and Redevelopment Sites Including all New Building, Renovations and Extensions* seeks to set out the economic, social and environmental criteria that development proposals will be required to meet.
43. *Policy T1 Sustainable Transport Accessibility and Design* seeks to ensure that development proposals will be required to demonstrate best practice in respect of sustainable transport accessibility and design.
44. *Policy H1 Protection and Enhancement of the World Heritage Site* requires development proposals within the Neighbourhood to sustain, conserve, and enhance the setting of the WHS where appropriate, by carrying out an assessment on how the development will affect the setting, including views to and from the WHS, protect important views and take opportunities to open up lost views. its Outstanding Universal Value and to support the current adopted management plan.
45. *Policy H2 The Conservation Areas* expects development within the City Centre Conservation Area to sustain and enhance its special interest and significance identified within the conservation area character appraisal taking account of sustaining and enhancing the historic and architectural qualities of buildings, continuous street frontages, patterns, boundary treatments, floorscape and roofscapes, avoiding loss or harm of an element that makes a positive contribution to its individual significance and surrounding area, using appropriate scale, density, massing, form, layout and materials, using high quality design sympathetic to the character and context, its significance and distinctiveness.
46. *Policy E4: Evening Economy* All development proposals, including those for a change of use, that would promote and/or support the early evening and night-time economy activity related to food and drink, arts and cultural uses, including later trading, will be supported provided that they contribute to the vitality and viability of the City Centre and add to, and improve, the cultural and diversity offer. Proposals should include a strategy regarding public safety and appropriate evidence that the development will have no significant adverse effect upon local amenity, including the amenity of local residents.

Supplementary Planning Documents

47. Residential Amenity Standards – January 2023.

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

48. *City of Durham Parish Council* – Objects to the proposal on the basis that the development would not contribute to the vitality and viability of the city centre contrary to Policy E4 of the Neighbourhood Plan and Policy 9 of the CDP. They consider that additional food and drink uses are already well provided for in the city centre and retail is what the city desperately needs to enhance its vitality and ensure its sustainability. They consider that the proposed uses would not enhance the cultural offer of the city. They remain concerned that noise from the development and the roof terrace would lead to a negative impact on residential amenity for nearby residential properties, and that problems in terms of servicing and waste collection will occur in the constrained streets resulting in public safety issues. They remain concerned in terms of the lighting impact on the character of the Conservation Area and World Heritage Site as well as the proposed fire escape strategy.
49. *Highways Authority* – From a Highways perspective, this development would be considered acceptable. The site would be located in a highly sustainable location in the centre of Durham City, just a short walk from the bus station and train station. The site is in a well established commercial area with good links for pedestrians and cyclists to access the site. Given the location within the existing commercial area, servicing times are already controlled by a Traffic Regulation Order with set times when servicing can take place. This development would also have to service within those controlled times.

NON-STATUTORY RESPONSES:

50. *Spatial Policy* – The proposal is within the defined city centre and within the primary shopping area. The key planning policy considerations are:
- The principle of development within this location having regard to retail and town centre policy including the impact on vitality and viability;
 - Impact on amenity and public safety.
- The County Durham Plan and Durham City Neighbourhood Plan support the development of main town centre uses commensurate with the role of a particular centre, and which strengthen the role of existing centres. This proposal will introduce main town centre uses into an existing building within the city centre. Durham City has many vacant premises (vacancy rates stands at 14.3%), so proposals which help to secure the long-term occupancy of a building and mitigate the vacancy rate from heading in the wrong direction should be supported in principle. There are also many vacant units surrounding the application site on Silver Street where retail proposal could go, and this, in my view, leads to a conclusion that scheme is unlikely to have an adverse impact on the vitality and viability of the city centre, and in many ways will help to protect and promote it. For all these reasons there are no policy objections to the principle of this proposal. Matters of details will need to be assessed relating to amenity and pollution, and it will need to be determined that the proposal within a reconfigured building in an historic setting will be safe and secure for all users.
51. *Design and Conservation* - This is a wide-ranging application seeking consent for a range of uses across the site with external alterations, a roof-top terrace and associated facilities. The acceptability of the principle of development is a matter for others, however, Silver Street currently has an adverse impact on the significance of the Durham City Conservation Area, due to current levels of occupancy, building and public realm condition issues and any benefits to vitality and the character of the area derived from this proposal should weigh in the balance in the determination of the application by the case officer. The application has been the subject of pre submission discussions with the design and conservation team and as such certain elements have been refined, however, elements of detail remain to be clarified as set out in the advice and opportunities section below. There are two primary design and conservation issues, firstly is the alteration to the Silver Street façade and secondly is the design

and impact of the roof top terrace which has a direct relationship with the boundary of the Durham World Heritage Site, and as a result of lighting proposals, has the capacity to impact on this and the setting, character and appearance of other surrounding designated and non-designated heritage assets. It is considered that given the signage proposals included in this application are merely indicative and will be controlled by a further application, all matters relating to the frontage can be resolved by imposition of conditions requiring samples of materials and further clarification on colour finishes. With regard to the roof-top terrace the only matter of concern relates to the lighting proposal, and it is noted from the agent's response to the Parish Council comments that the applicant is willing to accept a condition to further consider and refine lighting proposals in due course. Subject to the imposition of the requested conditions it is considered that design and conservation issues can be addressed and that in respect to policy 44 and 45 of the CDP, and H1 and H2 of the DCNP, the proposal is acceptable.

52. *Environmental Health Nuisance* - A noise impact assessment has been undertaken to support this application, in summary it concludes the proposed venue can comply with a Noise Rating curve of NR20 as stipulated in BS8233:2014 Guidance on Sound Insulation and Noise Reduction in Buildings. This is an internal level based on identified noise sensitive receptors around 50meters away. The location of the premises in a predominantly commercial area in Durham City with other bars and late-night venues, being in the area. Whilst we accept noise within the fabric of the building can be contained, we would have concerns about the roof top seating area especially during late evening and morning hours. It should be noted the Premises Licence has been granted and noise conditions attached. We would therefore suggest the planning officer may want to consider the following conditions to mitigate against excessive noise and maintain a reasonable level of amenity.

In addition, I can confirm that I have assessed the environmental impacts which are relevant to the development in relation to their potential to cause a statutory nuisance, as defined by the Environmental Protection Act 1990 and would comment as follows:

Having considered the information submitted with the application I believe the granting of planning permission for the development may potentially result in a statutory nuisance being created, as clarified below.

Noise from regulated entertainment and customers

However, I consider that the following conditions are sufficient to mitigate the potential of a statutory nuisance and therefore if affixed will remove my objection to the development.

- Noise from the licensed premises, including noise from patrons or amplified regulated entertainment, shall not be audible beyond the boundary of the premises to cause nuisance to nearby residents.
- There will be a noise management plan in place on the premises which should include regular noise monitoring during times when regulated entertainment is taking place.
- The premise shall not become operational until the noise management plan has been submitted to and approved by Environmental Health. This should be based on compliance with NR20 as stipulated in the noise report. We would suggest a verification assessment is undertaken to ensure the stipulated NR20 can be complied with and is achievable at the nearest noise sensitive receptor.

- No regulated entertainment in the form of live or recorded music will be permitted in the outside seating area after 23.00 hours.

Odour

An Odour Pollution Statement has been submitted, which states each food unit will be provided with a dedicated air extraction unit and electrostatic precipitator. A description of the precipitator has been provided; we would suggest a condition is affixed which requires details of the precipitators to be clarified, which should include a detailed schematic diagram of the extraction systems

Lighting

A Lighting Impact Assessment has been submitted which we agree with in principle. If planning permission is granted, then a condition should be affixed which requires:

Further details are required on the proposed external lighting for the site. Due to the proximity of the neighbouring premises light from the use could impact on residents/locality of the nearby properties. Therefore, a lighting spillage plan should be submitted with the application to show the predicted lighting levels at the nearest properties and locality.

EXTERNAL CONSULTEE RESPONSES:

53. *Police Architectural Liaison Officer* – requested consideration is given to coordinating deliveries in what is a busy pedestrianised area.
54. *City of Durham Trust* – opposes the proposal. They consider that the proposal would not contribute to the vitality and viability of the city centre, there is no deficiency of such proposed uses already, it would remove a significant element of retail space in the city further eroding the vitality and viability of the city centre. They consider that noise breakout will be detrimental to residential amenity, notably from the roof terrace and noise from patrons existing the premises is not accounted for. They raise concerns that the fire escape strategy is inadequate exiting into Moatside Lane resulting in a threat to public safety. They raise concerns in relation to the impact upon the historic environment, namely the roof terrace impact upon the World Heritage Site, including the lighting impact, and the impact of the proposed shopfront and signage.

PUBLIC RESPONSES:

55. The application was advertised by way of site notice, press notice and via direct letters to 71 neighbouring properties.
56. At the time of writing a total of 35 representations (objections) have been received in response to the consultation exercise. Additionally, a petition objecting and signed by 28 people has been received. Representations included objections from the Crossgate Community Partnership, the St Nicholas Community Forum and a pro-forma objection from 24 local food and drink businesses.
57. The main reasons for objection are as follows:
 - No need for additional food and drink businesses;
 - The unit should be retained in retail use to maintain vitality and viability;
 - Noise and disturbance to local residents;
 - Increase in anti-social behaviour;

- Inadequate fire escape strategy;
- Negative impact upon the World Heritage Centre/Conservation Area;
- Unreasonable competition for similar local businesses.

APPLICANT'S STATEMENT:

58. The application proposes a change of use application to the existing four storey building at 4-6 Silver Street into a new STACK facility that will promote and enhance the Durham City Centre's attraction. The site is in a highly accessible and sustainable location for the proposal that will bring back in full the existing building into uses appropriate for a City Centre location to support and enhance its vitality and viability.
59. The proposal will re-purpose an existing large-scale building to provide an exciting mixed-use space which includes food kiosks, cafes, bars and other leisure, entertainment and community uses. The proposal will allow for small businesses to occupy the spaces allowing for a variety of choice for consumers. The venue will also provide for live music performances and events for local people and visitors to Durham City Centre. Through enhancing the attraction of the centre, the proposal will support existing businesses within it as well as promoting the city centre as a location for new businesses to invest within it. The applicant and Council have worked in a positive and constructive manner to bring the proposed development forward through the planning system.
60. The existing building is largely vacant with only a small-scale temporary letting at ground floor level. The building was previously occupied by Marks and Spencer who vacated, relocating to the Arnison Centre five years ago in 2018. The building has subsequently not fulfilled its potential since Marks and Spencer vacated it. Extant planning permission exists to convert and extend upwards the building for student accommodation purposes, but this current application for STACK will retain the building in town centre commercial uses that generates high levels of local employment and provides service, leisure and community facilities for existing residents as well as tourists attracted to the area. The challenges affecting city and town centres are well documented. Durham City Centre also has its challenges with an above national average vacancy rates and one of the highest vacancy rates in the County which currently stands at 14.3%. The high vacancy rate detracts from the vitality and viability of Durham City Centre. The Spatial Policy Team have recognised that in permitting this proposal, there will still be plenty of units available for retail proposals to occupy. It is also recognised that there are several vacant units on Silver Street. This proposal would enhance the current vitality of the area and therefore attract further investment to the surrounding vacant units.
61. The Durham Tourism Management Plan (2016-2020) provides significant detail in how the county can prioritise investment in the tourism industry. The plan also recognises the gaps in the Durham offer and states that there is a lack of offering that would be found in more mature visitor destinations. The plan sets out these gaps and specifically cites that there is a gap in the evening economy and entertainment. It is recognised that in comparison with other heritage cities such as York and Bath, Durham's evening offer is limited. The plan identifies that a low key evening economy impacts on the ability of the county to attract staying visitors and the ability of Durham City to compete as a short break destination.
62. The proposal provides a mixed-use scheme which includes evening entertainment but also includes cafes, food kiosks and other day time attractions. The proposal would attract a range of visitors throughout the day and night therefore delivering towards

the aims of Visit County Durham in ensuring that visitors stay longer by providing a broad variety of attractions within the City Centre.

63. The proposal includes a roof terrace which is a key feature of the scheme and will be an attractive selling point for people visiting the street food outlets, bars and cafes of STACK. The Applicant has worked extensively with Durham County Council officers, specifically the Design and Conservation Officer who has recognised that the proposals would sustain the significance of the surrounding conservation area and setting of adjacent heritage assets subject to appropriately worded conditions. The WHS is also considered by officers to not be negatively impacted upon by the proposed roof terrace.
64. The applicant has also worked with the Environmental Health Officer to ensure that the proposed roof terrace would not negatively impact on the amenity of the surrounding area. Through this consultation, appropriate noise mitigation is proposed that ensures the amenity of surrounding residents.
65. We therefore conclude that the proposal revitalises a currently under-utilised site in Durham city centre. The STACK development provides inward investment within the city and wider area by providing new opportunities for small local businesses, employment opportunities and an exciting venue for local people and visitors that will enhance the vitality and viability of the City Centre.

The above is not intended to list every point made and represents a summary of the comments received on this application. The full written text is available for inspection on the application file which can be viewed at <https://publicaccess.durham.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=P8X9C0GDL8J00>

PLANNING CONSIDERATIONS AND ASSESSMENT

66. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that if regard is to be had to the development plan, decisions should be made in accordance with the development plan unless material considerations indicate otherwise. In accordance with advice within the National Planning Policy Framework (NPPF), the policies contained therein are material considerations that should be taken into account in decision making. Other material considerations include representations received. In this context, it is considered that the main planning issues in this instance relate to the principle of the development, highway safety and access, design and heritage impact and residential amenity.

Principle of the Development

67. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material planning consideration. The County Durham Plan (CDP) and the Durham City Neighbourhood Plan (DCNP) comprise the statutory development plan and the starting point for determining applications as set out in the Planning Act and reinforced at Paragraph 12 of the NPPF. The CDP was adopted in October 2020 and provides the policy framework for the County up until 2035, the DCNP was adopted in 2021.
68. NPPF Paragraph 11c requires applications for development proposals that accord with an up to date development plan to be approved without delay. NPPF Paragraph 12 states that where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take

decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

69. The application site is located within Durham's City Centre. The site is therefore an appropriate location for 'main town centre' uses as described at Annex B of the NPPF and glossary of the CDP. All of the Class E 'Commercial, Business and Services' and Sui Generis 'drinking establishments and venues for live music performance' uses that the Site will include meet the definition of a main town centre uses in the NPPF and CDP.
70. Durham City is recognised as a sub-regional centre within the retail hierarchy set out within Policy 9 (Retail Hierarchy and Town Centre Development) of the CDP. The CDP supports new town centre development across all of the county's centres that will improve choice and bring about regeneration and environmental improvements. Within the Primary Shopping Areas, (retail) uses will be supported, and other uses will be permitted where they preserve the vitality and viability of the Primary Shopping Areas.
71. In a similar vein, Policy E3 (Retail Development) of the DCNP is supportive of proposals that contribute to the creation of a lively and vibrant City Centre, with the main town centre uses (which includes drinking establishments) cited as acceptable under part a). The change of use of ground floor premises to be used for entertainment purposes is permissible under part b). Policy E4 (Evening Economy) of the DCNP requires all proposals that would promote and/or support the early evening and night-time economy activity related to food and drink, arts and cultural uses, including later trading, will be supported provided that they contribute to the vitality and viability of the City Centre and add to, and improve, the cultural and diversity offer. The policy goes on to state that proposals should include a strategy regarding public safety and appropriate evidence that the development will have no significant adverse effect upon local amenity, including the amenity of local residents.
72. The Council monitor town centres on an annual basis and this provides an assessment of the mix of uses within town centres within the County. The most recent assessment of Durham City was carried out in summer 2022, and the number of vacant units stood at 14.3% (national average is 14.1). This proposal relates to a unit which is currently partially occupied (and was at the time of the last assessment), and therefore its re-use will have a neutral impact on the vacancy figures. Durham City centre has one of the highest vacancy rates in the County. In light of this, the proposal is unlikely to undermine the vitality or viability of the centre, as there will still be a relatively high number of units available for retail proposals to occupy. There is also currently a pocket/concentration of vacant units on Silver Street neighbouring the application site which reinforces the view that the proposal will not undermine the vitality and viability of the city centre. It is considered important that blank frontages are avoided where possible and given that the establishment will be open during the day as well as on an evening, it will assist with these two issues.
73. The applicant has advised that the STACK facility in Seaburn attracts approximately 100,000 monthly visitors, with 70% of visitors coming from the Sunderland area and 30% coming from outside this area. 55% of users of a STACK facility visit more than once and 65% stay for more than two hours. In Newcastle, 66% of visitors to STACK also undertook a shop for non-essential goods, 90% also visited another licensed leisure premises, and 70% dined at another restaurant during their visit to Newcastle City Centre. Therefore, it is considered that the proposed development would create a new destination within a prominent city centre location which would increase footfall thereby improving the vitality and viability of the town centre.

74. The applicant will directly employ approximately 185 people, split as approximately 110 full-time employees and 75 part-time. In addition, the tenants that will operate from the Site will employ approximately 40 employees split as approximately 16 full-time positions and 24 part-time. Accordingly, approximately 225 people will be employed as a result of operations at the Site, which is a significant positive in terms of securing economic growth in a sustainable location.
75. The Annual Survey of Hours and Earnings: 2021 forecasts that the average weekly pay in the food services industry is £439 per week. The applicant estimates that there will be 176 full-time equivalent employees at the proposed operation. This level of employment generates a forecast of circa £4m in annual wage earnings, which will deliver wider economic benefits to the local economy through enhanced spending power and disposable income.
76. Taking account of all of the above, the Framework, CDP and DCNP support the development of main town centre uses commensurate with the role of a particular centre, and which strengthen the role of existing centres. This proposal will introduce main town centre uses into an existing building within the city centre which is currently under occupied. Durham City has many vacant premises (vacancy rates stands at 14.3%), so proposals which help to secure the long-term occupancy of a building and mitigate the vacancy rate from increasing will be supported in principle. There are also many vacant units surrounding the application site on Silver Street where retail proposals could be sited, and it is considered on this basis that the scheme is unlikely to have an adverse impact on the vitality and viability of the city centre, and in many ways will help to protect and promote it. In summary the principle of the development is considered acceptable against the relevant parts of the Framework, CDP Policy 9 and DCNP Policies E3 and E4.

Highways Safety and Access

77. Policy 21 of the CDP outlines that development should not be prejudicial to highway safety or have a severe cumulative impact on network capacity. It also expects developments to deliver well designed pedestrian routes and sufficient cycle and car parking provision. Similarly, Policy 29 advocates that convenient access is made for all users of the development together with connections to existing cycle and pedestrian routes. Specifically, the NPPF sets out at Paragraph 110 that safe and suitable access should be achieved for all people. In addition, Paragraph 111 of the NPPF states that development should only be refused on transport grounds where the residual cumulative impacts on development are severe.
78. The application site is located in a highly sustainable location in the centre of Durham City, just a short walk from the bus station and 7-minute walk to the train station. Public buses are available in the Market Place adjacent to the site. The site is in a well-established commercial area with good links for pedestrians and cyclists to access the site. Given the location within the existing commercial area, servicing times are already controlled by a Traffic Regulation Order with set times when servicing can take place via Silver Street. This development would also have to service within those controlled times. It is not considered that the servicing of the proposed operation would be significantly different to a full retail use and subject to adherence to the existing traffic restrictions and servicing times, to be controlled via condition, the proposal is considered to be acceptable in this regard.
79. The application is supported by an Outline Construction Management Plan which clearly identifies the constraints the successful contractor will be required to adhere to for the safe construction operations and working/delivery times. It is recommended a

condition is imposed to secure the submission of a final Construction Management Plan prior to the commencement of works.

80. Overall, the site represents a highly sustainable location, and the proposals are not considered to adversely affect highway or pedestrian safety, according with CDP Policy 21 and 29 and Part 9 of the NPPF.

Design and Heritage Impact

81. NPPF Paragraph 197 advises that in determining applications, local planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and the desirability of new development making a positive contribution to local character and distinctiveness.
82. NPPF Paragraph 199 advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
83. In addition, NPPF Paragraph 206 advises that Local Planning Authorities should look for opportunities for new development within Conservation Areas and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.
84. The approach of CDP Policy 44 is consistent with the NPPF in this respect in that it requires new development to contribute positively to the built and historic environment and seek opportunities to enhance, and where appropriate, better reveal the significance and understanding of heritage assets. The policy also sets out that development which leads to less than substantial harm to a designated heritage asset is required to be weighed against the public benefits of the proposal.
85. The aforementioned policies and guidance require the Local Planning Authority to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area and setting of Listed Buildings and this is in accordance with sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
86. Policy 45 provides additional specific guidance in relation to development which may impact upon Durham Castle and the Cathedral World Heritage Site. Both are designated heritage assets of the highest significance. New development should sustain and enhance the significance and be based upon Outstanding Universal Value, protecting and enhancing it in the immediate and wider setting and important views across, out of and into the site. Harmful development is only permitted in wholly exception circumstances.
87. Policy 29 of the CDP outlines that development proposals should contribute positively to an area's character, identity, heritage significance, townscape and landscape features, helping to create and reinforce locally distinctive and sustainable communities. Parts 12 and 15 of the NPPF also seek to promote good design, while protecting and enhancing local environments. Paragraph 130 of the NPPF also states that planning decisions should aim to ensure developments function well and add to

the overall quality of the area and establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit.

88. Policy 39 of the County Durham Plan states proposals for new development will be permitted where they would not cause unacceptable harm to the character, quality or distinctiveness of the landscape, or to important features or views. Proposals would be expected to incorporate appropriate measures to mitigate adverse landscape and visual effects. Policy 26 outlines developments are expected to provide new green infrastructure and ensure provision for its long-term management and maintenance. Similar requirements are outlined in Policy 29. Policy 40 seeks to avoid the loss of existing trees and hedgerows unless suitable replacement planting is provided. Parts 12 and 15 of the NPPF promotes good design and sets out that the planning system should contribute to and enhance the natural and local environment by (amongst other things) recognising the intrinsic character and beauty of the countryside.
89. The Durham City Neighbourhood Plan is also relevant when considering design and heritage impact. Policy H1 Protection and Enhancement of the World Heritage Site requires development proposals within the Neighbourhood to sustain, conserve, and enhance the setting of the WHS where appropriate, by carrying out an assessment on how the development will affect the setting, including views to and from the WHS, protect important views and take opportunities to open up lost views. its Outstanding Universal Value and to support the current adopted management plan. Policy H2 The Conservation Areas expects development within the City Centre Conservation Area to sustain and enhance its special interest and significance identified within the conservation area character appraisal taking account of sustaining and enhancing the historic and architectural qualities of buildings, continuous street frontages, patterns, boundary treatments, floorscape and roofscapes, avoiding loss or harm of an element that makes a positive contribution to its individual significance and surrounding area, using appropriate scale, density, massing, form, layout and materials, using high quality design sympathetic to the character and context, its significance and distinctiveness.
90. The site is Nos 4-6 Silver Street, in Durham City Centre, it is located at the north-eastern end of Silver Street and comprises a three-storey flat roofed building. The site is located in the historic core of Durham City Centre Conservation Area but is not a listed building or a non-designated heritage asset. The site is also located to the north of Durham World Heritage Site. The wider location currently provides shopping and leisure experiences with public pedestrian walkways linking the site to other parts of the City Centre including Moatside Lane, a historic remnant of the city plan form. The site is surrounded by other commercial, community and civic uses and is in proximity to existing residential and student accommodation. The floorspace was previously occupied by Marks and Spencer and more recently M&Co, currently, part of the ground floor of the site is operated by Yorkshire Trading Co. The upper floors remain unoccupied.
91. The submitted heritage statement identifies the role the site plays in the surrounding conservation area, identifies the relationship to the WHS and other designated assets around the site. The building is not listed nor is it identified as a non-designated heritage asset. The significance, values and attributes of the building have previously been identified as follows:

The existing building is of low historic and architectural interest being part of a C20 redevelopment of No's 1-8 Silver Street. Historically the site comprised of four separate buildings onto Silver Street that were typical of the historic layout of the city, as shown on the 1st edition OS map c.1860. Substantial changes appear c.1939 with a large block on the west side, this was then extended in c.1959, then in c.1977 a

further extension was added to the rear. This redevelopment (M&S and Tesco) obliterated the historic burgage plot pattern in this area, introducing larger modern blocks in horizontal form that conflict with the fragmented vertically expressed built form that characterises the historic core of the city. The elevation of the building to Silver Street is of a plain but ordered neo-Georgian style with elements of detailing and uses a parapet to manage its height and give a polite finish at roof level. The ground floor is in stark contrast to the upper floors as it consists of a low-quality modern shop frontage.

92. In terms of significance the sites historic interest is low, and it possesses no evidential or communal/social values. Despite the buildings C20 age the front elevations upper floors have some degree of aesthetic/design value in the context of the street scene. Overall, it does not have historic or architectural interest to be a non-designated heritage asset and on that basis the frontage at ground floor level has capacity for appropriate change.
93. There are a limited number of external design and material issues to be considered as part of this application, they are detailed below:
- New P.P.C cladding to all columns on support structure on the frontage
 - New P.P.C flat fascia above window areas at ground floor level which will host the signage that will be subject to a separate application
 - New P.P.C double glazed shopfront screens & doors on the building frontage
 - New recessed opening with P.P.C steel security doorset with over panel on right hand side of the building frontage
 - Existing brickwork plinths to be painted
 - Vertical feature cladding fixed to new insulated masonry cavity wall in recessed entrance to the right of the centre of the building frontage that provides access points into the two lobby areas
 - Vertical feature cladding fixed to wall in existing recessed entrance on the left hand side of the building frontage
 - New P.P.C steel security doorsets
94. As highlighted above the assessment of significance identifies the ground floor frontage as of low quality, having capacity for appropriate change. The most challenging element of the proposals submitted relates to the scale of the lettering, however, this will be subject to further applications and as such the matters being considered here relate to the revised form of the frontage and the use of new materials and finishes. The proposal seeks to strike a balance between the corporate identity of the applicant and the capacity of the surrounding conservation area to accommodate a modern contemporary industrially influenced design. The proposal seeks to work with the established form of the building, using the already deep fascia, painting the stallriser rather than changing it and seeking to recess the more visually striking elements so that they are not prominent in oblique views when passing up and down Silver Street and looking from the Market Place. There is no doubt that the frontage proposals will have a visual impact, however, as a landmark destination, striking features are well established as a means of presenting developments in the streetscene throughout the conservation area including Prince Bishops, River Walk and other leisure venues adjacent to Elvet and Framwellgate Bridges. Whilst the proposal is ambitious it is considered that subject to careful control of delivery it can be integrated without harm to the surrounding historic environment whilst meeting the applicant's distinct requirements.
95. There is no concern with regard to the inclusion of a roof terrace. Outside recreation areas have become increasingly part of the leisure economy of the city and given the scale and location of that proposed it is considered that this can be assimilated in to

the roofscape without harm. Views will be of a screened and attractively designed space which again may well add to the vitality of the surrounding area. The close relationship of this development to the WHS does not give rise for concern.

Impact on Significance

96. It is considered that subject to careful control of future signage proposals and control of materials, detail and finishes in regard to the frontage of the building, the significance of the surrounding conservation area and setting of adjacent heritage assets can be sustained. The alterations to the façade are not considered to impact on the WHS.
97. Whilst alterations to the Moatside Lane elevation and the roof terrace proposals may feature in views to and from the WHS it is considered that subject to careful control of external lighting by condition the impact will be neutral at worst and possibly may deliver a minor improvement if roof top plant is better controlled going forward and the area is appropriately managed.
98. Views out from the Castles North Range and North Terrace are possible across the subject roof, but this is seen as a cluttered mundane flat roof of no quality or character, that adds nothing to the visual experience of the city's roofscape out from the WHS. The experience from the North Terrace is the emphasis of the feeling of the Castles dominance over the fragmented city, an attribute of its Outstanding Universal Values (OUV), that would be unaffected. The views out from this part of the WHS are also not something regularly experienced and thus cannot be afforded the same value as other key public views looking towards the WHS.
99. The impact of additional illumination to the subject roof has been assessed previously, identifying that provided illumination is below the skyline, off-set from the Castle, and falling outside the dark cloak around the base of the WHS, there would be no expected harmful impact. Intervisibility would be restricted and the WHS is noted as already featuring within a well-lit environment with a scattering of artificial light sources in the foreground and higher backdrop of the site. Appropriate lighting forms and levels generally creating no discernible difference that would not detract from the presence, experience, and visual appeal of the WHS at night.
100. There are no identified key relationships between the application site and the WHS and views from the north terrace are restricted and unlikely to be evening views. There will be no impact on the OUV's. Whilst the submitted documentation could have better demonstrated this, the design and conservation team have reviewed this matter on a number of occasions and are confident in the conclusion reached.
101. It is advised that in order to control detail which will protect the significance of surrounding heritage assets and deliver a policy compliant form of development, conditions covering the following matters should be applied to any approval:
 - Details of all external lighting, including, design, location, specification, lighting levels and impact assessment
 - Samples of all external materials
 - Details of all surface finishes including BS or RAL standard colour
 - Full details and specifications of all external doors and windows including construction details, materials, opening mechanism, colours and finishes
 - Details, of all external plant and equipment including screening

102. The application site is located at 4-6 Silver Street, a street which is considered currently to have an adverse impact on the significance of the Durham City Conservation Area, due to current levels of occupancy, building and public realm condition issues.
103. There are two primary design and conservation issues to consider, firstly is the alteration to the Silver Street façade and secondly is the design and impact of the roof top terrace which has a direct relationship with the boundary of the Durham World Heritage Site, and as a result of lighting proposals, has the capacity to impact on this and the setting, character and appearance of other surrounding designated and non-designated heritage assets.
104. It is considered that given the signage proposals included in this application are merely indicative and will be controlled by a further application, all matters relating to the frontage can be resolved by imposition of conditions requiring samples of materials and further clarification on colour finishes. With regard to the roof-top terrace the only matter of concern relates to the lighting proposal, and it is noted from the agent's response to the Parish Council comments that the suggested condition to further consider and refine lighting proposals in due course has been discussed and agreed with the applicant.

Summary on Design and Heritage Impact

105. In conclusion, it is considered that the significance and setting of the heritage assets, designated and non-designated would be either sustained, conserved or slightly enhanced where appropriate. As such, the proposals are deemed to accord with the principles set out in Part 16 of the NPPF, CDP policies 44, 45, 16 3f) and 29, as well as Neighbourhood Plan Policies H1 and H2 and sections 66 & 72 of the Listed Building Act. This would be subject to the imposition of conditions for full details of materials for all shopfront works and lighting schemes.

Residential Amenity

106. Policies 29 and 31 of the CDP outline that developments should provide high standards of amenity and privacy, minimise the impact of development upon the occupants of existing adjacent and nearby properties and not lead to unacceptable levels of pollution. A Residential Amenity Standards Supplementary Planning Document (SPD) has also been adopted by the Council. The aforementioned policies and SPD can be afforded significant weight. Parts 12 and 15 of the NPPF, which require that a good standard of amenity for existing and future users be ensured, whilst seeking to prevent both new and existing development from contributing to, or being put at unacceptable risk from, unacceptable levels of pollution. Policy E4 (Evening Economy) of the DCNP states that all development proposals, including those for a change of use, that would promote and/or support the early evening and night-time economy activity related to food and drink, arts and cultural uses, including later trading, will be supported provided that they contribute to the vitality and viability of the City Centre and add to, and improve, the cultural and diversity offer. Proposals should include a strategy regarding public safety and appropriate evidence that the development will have no significant adverse effect upon local amenity, including the amenity of local residents.
107. Where a proposed use is considered locationally acceptable in principle, consideration needs to be given to the impact that the development would have on the amenities of nearby residential receptors. It is important to recognise that drinking establishment and venue for live music performances and events can give rise to noise and disturbance which could have an impact on the amenity of existing and future

occupiers of adjoining properties and other properties in the immediate area, principally those in residential use. Uses such as restaurants, public houses, music venues and takeaways may detrimentally affect the locality of an area, through disturbance caused at times when residents want to enjoy peace and quiet. At these times, nuisance may be caused by the business itself (e.g., noise from the venue) and also from customers/patrons congregating outside. These considerations also need to be examined in the context of CDP Policy 31 above.

108. Whilst the application building has no directly attached residential neighbours, there are approved upper floor residential uses in close proximity to the site. Notably 7-8 Silver Street (next door but separated by Moatside Lane), 9 and 9A Silver Street, 12 Silver Street, 37-38 Silver Street, 33 Silver Street, 29-31 Silver Street and at the rear of the site Castle View and Moorside Mews accessed via Saddler Lane.
109. In terms of the proposal, consideration has been given to the potential impact on nearby residential properties from noise from music, noise from patrons, impacts from odour from cooking and impact from lighting. A Noise Impact Assessment is supplied with the application which assesses the noise impacts of the proposal on potential sensitive receptors. In summary it concludes the proposed venue can comply with a Noise Rating curve of NR20 as stipulated in BS8233:2014 Guidance on Sound Insulation and Noise Reduction in Buildings.

Noise

110. Specialist officers with Environmental Health consider that first and foremost noise from music and patrons can be contained within the fabric of the building, but would have concerns about the roof top seating area especially during late evening and morning hours. Their opinion that such impacts would be at an acceptable level is contingent on the following planning conditions being imposed:
- Noise from the licensed premises, including noise from patrons or amplified regulated entertainment, shall not be audible beyond the boundary of the premises to cause nuisance to nearby residents.
 - There will be a noise management plan in place on the premises which should include regular noise monitoring during times when regulated entertainment is taking place.
 - The premise shall not become operational until the noise management plan has been submitted to and approved by Environmental Health. This should be based on compliance with NR20 as stipulated in the noise report. We would suggest a verification assessment is undertaken to ensure the stipulated NR20 can be complied with and is achievable at the nearest noise sensitive receptor.
111. In terms of the external roof terrace, it is acknowledged that potential for noise breakout is more likely in this open area. On that basis, officers of Environmental Health require a tighter restriction on operating hours as follows:
- No regulated entertainment in the form of live or recorded music will be permitted in the outside seating area after 23.00 hours.
112. It is considered subject to the restrictive conditions detailed above, sufficient control will be in place to mitigate the potential of a statutory nuisance and to protect the amenity of nearby residential units from noise disturbance.

Odour

113. In terms of odour an Odour Pollution Statement has been submitted, which states each food unit will be provided with a dedicated air extraction unit and electrostatic precipitator. A basic description of the precipitator has been provide but a condition is proposed which requires details of the precipitators to be clarified, which should include a detailed schematic diagram of the extraction systems. Subject to the imposition of such a condition there is no reason to suggest any adverse impact from odour will occur.

Lighting

114. A Lighting Impact Assessment has been submitted which has been scrutinised. Whilst no fundamental issues are raised with its findings, a condition is proposed which requires:

- Further details are required on the proposed external lighting for the site. Due to the proximity of the neighbouring premises light from the use could impact on residents/locality of the nearby properties. Therefore, a lighting spillage plan should be submitted with the application to show the predicted lighting levels at the nearest properties and locality.

Subject to the imposition of such a condition there is no reason to suggest any adverse impact from lighting will occur.

115. In terms of disturbance and antisocial behaviour, the police raise no objections to the scheme but highlight the need for coordinated and managed delivery and servicing arrangements. These are considered in the Highways section of the report and are capable of being controlled via planning condition. It should be noted that the site has been considered and approved via the licensing regime which is better suited to address such issues.
116. Overall, subject to conditions, the proposals are not considered to adversely affect residential amenity or living conditions, in accordance with CDP Policy 31 and Parts 12 and 15 of the NPPF.

Ecology

117. Policies 41 and 43 of the CDP seek to secure net gains for biodiversity and coherent ecological networks. Policy 43 relates to protected species and nationally and locally protected sites. Part 15 of the NPPF seeks to ensure that developments protect and mitigate harm to biodiversity interests, and where possible, improve them.
118. A Preliminary Roost Assessment Report was carried out by the applicants which concluded the site had negligible potential for nesting birds and low potential for roosting bats. Similarly, a Preliminary Ecological Appraisal (PEA) of the site was undertaken in September 2022 which informed the submitted Biodiversity Net Gain Assessment. It concluded that the nature of the site was developed land with sealed surfaces. The development would remove 23 sqm of sealed surfaces. In summary there would be no loss of habitat. The proposals do include a small amount (23 sqm) of ornamental planting on the roof terrace. This is acknowledged to be a very minor net gain in biodiversity terms. On that basis the proposal can be demonstrated to accord with the above policies and guidance.

Sustainability

119. Policy 29 of the CDP requires all development to minimise greenhouse gas emissions, by seeking to achieve zero carbon buildings and providing renewable and low carbon energy generation. Policy 29 also requires all development to minimise the use of non-renewable and unsustainable resources, including energy, water and materials, during both construction and use by encouraging waste reduction and appropriate reuse and recycling of materials, including appropriate storage space and segregation facilities for recyclable and non-recyclable waste and prioritising the use of local materials.
120. It is acknowledged that the proposal will be delivered through the re-purposing of an existing building in a highly sustainable and accessible city centre location. This will minimise the impacts of the development on the environment through ensuring that embodied carbon within the building would be maintained. It is however considered reasonable to further explore the potential for on-site renewables and low energy technologies and to that end a suitable condition has been suggested to allow such strategies to be developed by the applicant.
121. Subject to the suggested condition, the proposals are considered to accord with the sustainability aims of CDP Policy 29.

Other Considerations

122. The proposal has generated some public interest, with 35 representations of objection having been received from local residents. The objections, queries and concerns raised have been taken account and addressed within the report, where appropriate.
123. The issue of unfair competition to other local food and drink businesses was raised in some of the public representations. This is not a material planning consideration.
124. The issue of unsafe fire evacuation routes has also been raised. Consultation was carried out with the Fire Brigade, but no comments were received. The premises will need to operate in line with its own fire safety certificate secured outside of the Planning System and it is understood this is in place.

CONCLUSION

125. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. NPPF Paragraph 12 states that where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.
126. In summary, the application site lies within the primary shopping area of the city centre and would see the introduction of a mixed town centre use development ran by an established regional operator that would bring an under used building back into full use. The city centre currently has an above average level of vacant units, and this proposal would enhance its vitality and viability in line with the aims of the City of Durham Neighbourhood Plan. The developed is anticipated to lead to the creation of 176 full time equivalent jobs for local people and this is a significant benefit in line with CDP Policy 9.

127. It is considered that the significance and setting of the heritage assets, designated and non-designated would be either sustained, conserved or slightly enhanced where appropriate. As such, the proposals are deemed to accord with the principles set out in Part 16 of the NPPF, CDP policies 44, 45, 16 3f) and 29, as well as Neighbourhood Plan Policies H1 and H2 and sections 66 & 72 of the Listed Building Act.
128. Subject to conditions to secure acoustic and a range of other mitigation measures to safeguard the amenity of the occupants of nearby residential properties, the development would accord with CDP Policy 31.
129. Overall, it is considered that the scheme would comply with the relevant parts of the Framework and the Development Plan. There are no material considerations which indicate otherwise and therefore the application is recommended for approval.

RECOMMENDATION

That the application be **APPROVED** subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby approved shall be carried out in strict accordance with the approved plans listed in Part 3 - Approved Plans.

Reason: To define the consent and ensure that a satisfactory form of development is obtained in accordance with Policy(ies) 29 and 44 of the County Durham Plan and Parts 2, 12 and 16 of the National Planning Policy Framework.

3. No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall include as a minimum but not necessarily be restricted to the following:

1. A Dust Action Plan including measures to control the emission of dust and dirt during construction.
2. Details of methods and means of noise reduction/suppression.
3. Where construction involves penetrative piling, details of methods for piling of foundations including measures to suppress any associated noise and vibration.
4. Details of measures to prevent mud and other such material migrating onto the highway from all vehicles entering and leaving the site.
5. Designation, layout and design of construction access and egress points.
6. Details for the provision of directional signage (on and off site).

7. Details of contractors' compounds, materials storage and other storage arrangements, including cranes and plant, equipment and related temporary infrastructure.
8. Details of provision for all site operatives for the loading and unloading of plant, machinery and materials.
9. Details of provision for all site operatives, including visitors and construction vehicles for parking and turning within the site during the construction period.
10. Routing agreements for construction traffic.
11. Details of the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
12. Waste audit and scheme for waste minimisation and recycling/disposing of waste resulting from demolition and construction works.
13. Management measures for the control of pest species as a result of demolition and/or construction works.
14. Detail of measures for liaison with the local community and procedures to deal with any complaints received.

The management strategy shall have regard to BS 5228 "Noise and Vibration Control on Construction and Open Sites" during the planning and implementation of site activities and operations.

The approved Construction Management Plan shall also be adhered to throughout the construction period and the approved measures shall be retained for the duration of the construction works.

Reason: To protect the residential amenity of existing and future residents from the development in accordance with Policy 31 of the County Durham Plan and Part 15 of the National Planning Policy Framework. Required to be pre commencement to ensure that the whole construction phase is undertaken in an acceptable way.

4. Notwithstanding any details of materials submitted with the application no external development shall commence until details of the make, colour and texture of all shopfront materials, doors and windows have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.

Reason: In the interests of the appearance of the area and to comply with Policy 29 of the County Durham Plan and Part 12 of the National Planning Policy Framework.

5. The development shall not be brought into use until a Noise Management Plan based on compliance with NR20 in residential dwellings after 23:00 as stipulated in the submitted noise report has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include measures to address the noise insulation of walls, floors, windows and roofs between the premises and adjacent properties. The development shall be carried out in accordance with the approved scheme and shall be permanently retained thereafter.

Reason: In the interest of the amenity of existing and future occupants in accordance with Policy 31 of the County Durham Plan and Part 8 of the National Planning Policy

Framework. Required as a pre commencement condition to ensure that an appropriate scheme is agreed and can be implemented.

6. The development shall not be brought into use until details of the proposed electrostatic precipitators have been submitted to and approved in writing by the Local Planning Authority. The details should include a schematic diagram of the extraction system. The development shall be carried out in accordance with the approved details and shall be permanently retained thereafter.

Reason: In the interest of the amenity of existing and future occupants in accordance with Policy 31 of the County Durham Plan and Part 8 of the National Planning Policy Framework. Required as a pre commencement condition to ensure that an appropriate scheme is agreed and can be implemented.

7. The development shall not be brought into use until details of the proposed external mechanical plant and screens have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and shall be permanently retained thereafter.

Reason: In the interest of the amenity of existing and future occupants and nearby heritage assets in accordance with Policies 29, 31, 39, 44 and 45 of the County Durham Plan and Parts 12 and 16 of the National Planning Policy Framework. Required as a pre commencement condition to ensure that an appropriate scheme is agreed and can be implemented.

8. The development shall not be brought into use until details of the external lighting of the building, including the roof terrace, have been submitted to and approved in writing by the Local Planning Authority. The details should include a lighting spillage plan showing the predicted lighting levels at surrounding properties. The development shall be carried out in accordance with the approved details and shall be permanently retained thereafter.

Reason: In the interest of the amenity of existing and future occupants and nearby heritage assets in accordance with Policies 29, 31, 39, 44 and 45 of the County Durham Plan and Parts 12 and 16 of the National Planning Policy Framework. Required as a pre commencement condition to ensure that an appropriate scheme is agreed and can be implemented.

9. The development hereby approved shall at all times be carried out in accordance with the submitted Service/Deliveries Management Plan.

Reason: In the interests of visual amenity and highway safety in accordance with Policies 21 and 29 of the County Durham Plan and Parts 8, 9 and 12 of the National Planning Policy Framework.

10. The development hereby permitted shall at all times be operated in accordance with the control measures as defined in the submitted Odour Pollution Statement.

Reason: In the interest of the amenity of existing and future occupants in accordance with Policy 31 of the County Durham Plan and Part 8 of the National Planning Policy Framework.

11. No regulated entertainment in the form of live or recorded music will be permitted in the outside seating area after 23.00 hours.

Reason: In the interest of the amenity of existing and future occupants in accordance with Policy 31 of the County Durham Plan and Part 8 of the National Planning Policy Framework.

12. The premises shall not be open to customers outside the hours of 08:00 and 00:30 Monday - Thursday and 08:00 - 01:30 Friday - Sunday.

Reason: In the interests of the residential amenity of surrounding properties in accordance with Policy 31 of the County Durham Plan and Part 15 of the National Planning Policy Framework.

13. Prior to the first beneficial occupation of the development, details of a scheme to minimise greenhouse gas emissions shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall aim to include, but not be limited to, provision of renewable energy generation, low energy lighting, and energy efficient plant. Thereafter, the renewable and low carbon energy measures shall be installed in accordance with the approved details and retained for the lifetime of the development.

Reason: To comply with requirements to minimise greenhouse gas emissions in line with details set out in policy 29c) of the CDP.

STATEMENT OF PROACTIVE ENGAGEMENT

In accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority has, without prejudice to a fair and objective assessment of the proposals, issues raised and representations received, sought to work with the applicant in a positive and proactive manner with the objective of delivering high quality sustainable development to improve the economic, social and environmental conditions of the area in accordance with the NPPF.

BACKGROUND PAPERS

Submitted application form, plans, supporting documents and subsequent information provided by the applicant

Statutory, internal and public consultation responses

The National Planning Policy Framework

National Planning Practice Guidance Notes

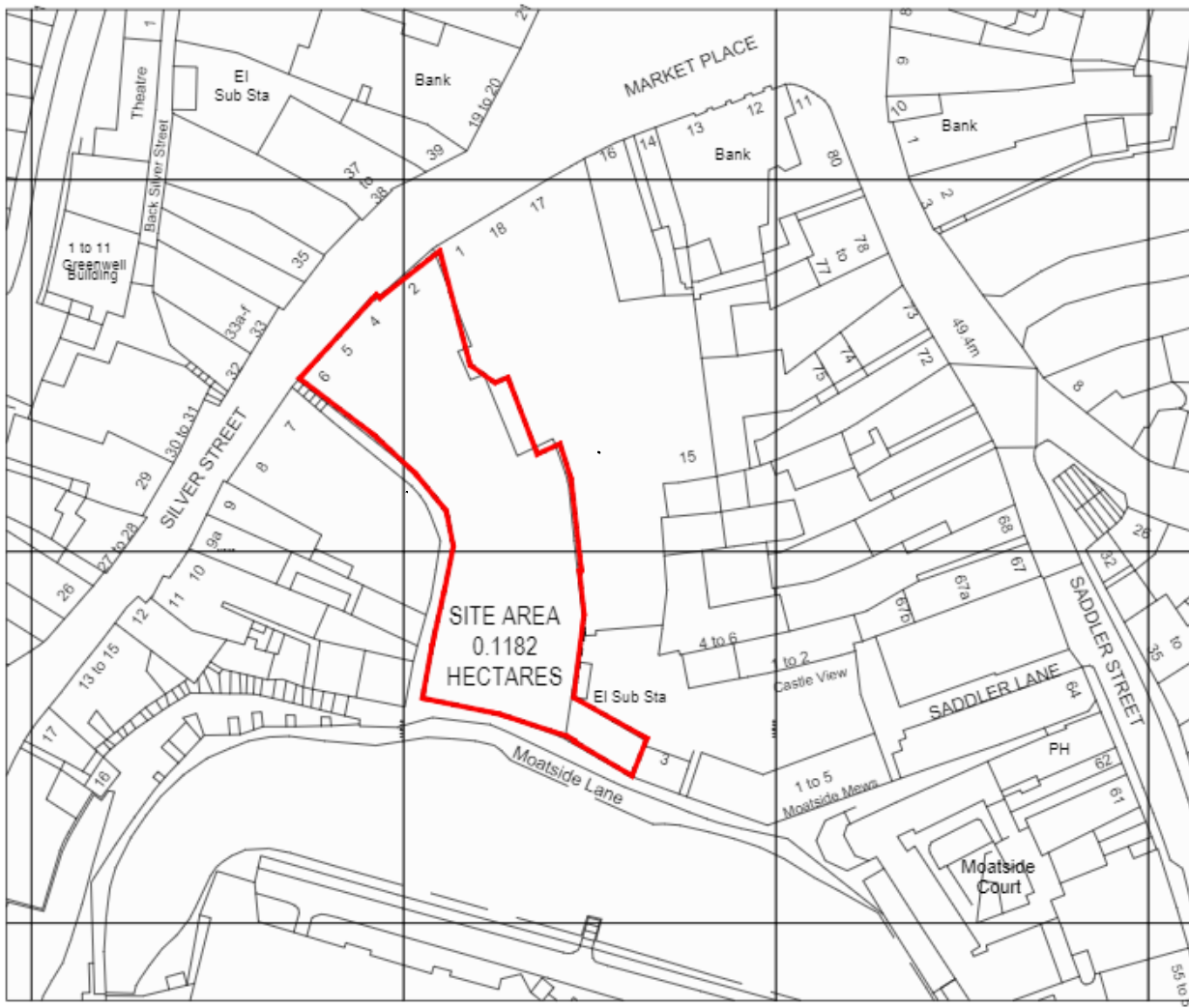
County Durham Plan

County Durham Strategic Housing Land Assessment Report (2019)

County Durham Strategic Housing Market Assessment (2019)

Open Space Needs Assessment (2018)

Residential Amenity Standards SPD (2023)



Planning Services

Change Of Use from Class E 'Commercial, Business and Services' to a mixed-use comprising uses within use Class E and Sui Generis 'Drinking establishments and venues for live music performances and events' with ancillary facilities, alterations to the external elevations and provision of a roof-top terrace with external seating and associated facilities.

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Date 11th April 2023

Scale NTS